

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JACOB ATKINSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AARON'S, LLC DBA AARON'S SALES &
LEASE OWNERSHIP, LLC, a foreign for
profit limited liability corporation; and DOES
1-20,

Defendants.

No. 2:23-cv-01742-BJR

**PLAINTIFF'S MOTION FOR PARTIAL
RECONSIDERATION**

Pursuant to Fed. R. Civ. P. 59(e) and Local Rule 7(h), Plaintiff Jacob Atkinson ("Plaintiff") respectfully asks this Court to partially reconsider its Order Granting Defendant Aaron's, LLC DBA Aaron's Sales & Lease Ownership, LLC's ("Defendant") Motion to Dismiss. ECF No. 24. Partial reconsideration is appropriate because the Court committed manifest error by dismissing this case for lack of Article III standing instead of remanding the case to state court.

I. STANDARD OF REVIEW

A motion for reconsideration is appropriate where a prior ruling contained manifest error of law. *See* W.D. Wash. Local Rules LCR 7(h)(1); *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). A "manifest error" is one that disregards controlling law. *Teamsters Loc. 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 282 F.R.D. 216, 231-32 (D. Ariz. 2021).

1 A party may raise new authority in a motion for reconsideration to allow the court to correct errors
2 of law. *See Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 405 (1990) (“A district court would
3 necessarily abuse its discretion if it based its ruling on an erroneous view of the law,”); *Whittaker*
4 *Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992) (describing a motion for
5 reconsideration as “a clear opportunity [for the district court] to review the validity of its order.”).
6 Here, Plaintiff respectfully submits that the Court committed manifest error by failing to comply
7 with the removal statute’s mandate to remand a case when subject matter jurisdiction is lacking.
8 *See* 28 U.S.C. § 1447(c). Because remand would not be futile, as Article III does not apply in
9 state court, the Court’s only option was to remand this case, and it must do so now.

10 **II. PROCEDURAL BACKGROUND**

11 Plaintiff filed this proposed class action in King County Superior Court, alleging
12 violations of the Washington Equal Pay and Opportunities Act, RCW 49.58.110. Defendant filed
13 a notice of removal in the case on November 13, 2023, declaring that subject matter jurisdiction
14 exists. ECF No. 1 at 10. Despite having just asserted a basis for federal subject matter jurisdiction,
15 Defendant then moved to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P.
16 12(b)(1), contending Plaintiff lacked Article III standing. ECF No. 24. The Court granted
17 Defendant’s motion to dismiss without prejudice and allowed Plaintiff to amend his complaint by
18 May 15, 2024. ECF No. 37.

19 **III. ANALYSIS**

20 Plaintiff respectfully submits that controlling law requires the Court to reconsider the
21 portion of its order dismissing this case, and instead remand this case to state court. Plaintiff also
22 respectfully asks the Court to stay the deadline to amend his complaint set forth in its prior Order
23 while the Court considers this motion.

24 **A. The Court must remand a case if subject matter jurisdiction is lacking.**

25 Federal district courts are courts of limited jurisdiction and “there is a general presumption
26 against federal court review.” *Lanza v. Aschcroft*, 389 F.3d 917, 930 (9th Cir. 2004). The party
asserting jurisdiction bears the burden of rebutting that presumption. *Kokkonen v. Guardian Life*

1 *Ins. Co. of America*, 511 U.S. 375, 377 (1994). For that reason, a defendant who removes a case
2 from state to federal court bears the burden of establishing federal subject matter jurisdiction.
3 *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009); *Corral v. Select*
4 *Portfolio Servicing, Inc.*, 878 F.3d 770, 773-74 (9th Cir. 2017) (describing this burden as
5 “particularly stringent”) (internal citations omitted). The removing defendant’s burden includes
6 “establishing the existence of a case or controversy under Article III, including ‘the core
7 component of standing.’” *Env’t Rsch. Ctr. v. Heartland Prods.*, 29 F. Supp. 3d 1281, 1283 (C.D.
8 Cal. 2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Thus, the removing
9 defendant cannot “have it both ways by asserting, then immediately disavowing, federal
10 jurisdiction[.]” *Ayala v. Sixt Rent a Car, LLC*, No. 19-1514 FMO (MRWx), 2019 WL 2914063,
11 at *2 (C.D. Cal. July 8, 2019) (quoting *Mocek v. Allsaints USA Ltd.*, 220 F. Supp.3d 910, 914
12 (N.D. Ill. 2016)). But that is precisely what Defendant did here. Compare ECF No. 1, with ECF
13 No. 24.

14 Although Federal Rule 12(h) ordinarily requires district courts to dismiss cases for lack
15 of subject matter jurisdiction, where a case has been removed, “[i]f at any time before final
16 judgment it appears that the district court lacks subject matter jurisdiction, the case *shall be*
17 *remanded.*” 28 U.S.C. § 1447(c) (emphasis added). Under § 1447(c), remand is “mandatory, not
18 discretionary.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997). When
19 a plaintiff lacks Article III standing, “the district court generally *must* remand the case to state
20 court, rather than dismiss it.” *Polo v. Innoventions Int’l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016)
21 (citing *Bruns*, 122 F.3d at 1257). “Remand is the correct remedy because a failure of federal
22 subject-matter jurisdiction means only that *federal* courts have no power to adjudicate the matter.
23 State courts are not bound by the constraints of Article III.” *Id.* (citing *ASARCO Inc. v. Kadish*,
24 490 U.S. 605, 617 (1989)). Because “the ultimate responsibility to ensure jurisdiction lies with
25 the district court,” no motion to remand is necessary. *Id.*

26 Here, once the Court concluded that Plaintiff lacked Article III standing, its only option
was to remand the case to state court. See *Polo*, 833 F.3d at 1196, 1199 (reversing district court’s

1 order dismissing case for lack of subject matter jurisdiction because plaintiff lacked Article III
2 standing with instructions to remand to state court); *Terrell v. Costco Wholesale Corp.*, C16-
3 1415JLR, 2017 WL 2169805, at *2 (W.D. Wash. May 16, 2017) (remanding case to state court
4 because defendant argued the plaintiff lacked standing); *Walker v. Kroger Co.*, Case No. 22-cv-
5 00261-JST, 2022 WL 20208929, at *1-3 (N.D. Cal. June 21, 2022) (same); *Ayala*, 2019 WL
6 2914063, at *2 (same); *Morgan v. Bank of America, N.A.*, No. 2:20-CV-000157-SAB, 2020 WL
7 3979660, at *2-3 (E.D. Wash. July 14, 2020) (same); *see also Moliga v. Qdoba Rest. Corp.*, No.
8 2:23-CV-01084-LK, 2023 WL 5013439, at *5 (W.D. Wash. Aug. 7, 2023) (in action under RCW
9 49.58.110, ordering parties to show cause why case should not be remanded for lack of federal
10 subject matter jurisdiction).¹ The Court’s decision to dismiss, rather than remand the case as
11 required by controlling law, was manifest error. Plaintiff respectfully moves for partial
12 reconsideration on this basis and asks the Court to remand this case. *See 389 Orange Street*
13 *Partners*, 179 F.3d at 665.

14 **B. Remand would not be futile.**

15 Courts have articulated one narrow exception to the clear rule that a removed case “shall
16 be remanded” rather than dismissed if subject matter jurisdiction is lacking. 28 U.S.C. § 1447(c).
17 This “futility” exception applies only where the district court has “absolute certainty” that a state
18 court would “simply dismiss[] the action” for the same reason the district court applied and
19 remand would be futile. *Bell v. City of Kellogg*, 922 F.2d 1418, 1425 (9th Cir. 1991). Remand
20 would not be futile here. First, the futility exception, which contradicts the removal statute, “has
21 been questioned, and may no longer be good law.” *Polo*, 833 F.3d at 1197. Second, even if the
22 futility exception were still good law, it does not apply here because the Washington Constitution
23 does not limit state superior courts’ jurisdiction as Article III of the U.S. Constitution does. *See*

24 ¹ Appellate courts throughout the country are in accord. *See, e.g., Plazzi v. FedEx Ground Package Sys.*, 52 F.4th 1,
25 7 (1st Cir. 2022); *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014); *Samuel-Bassett v.*
26 *KIA Motors Am., Inc.*, 357 F.3d 392, 403 (3d Cir. 2004); *Roach v. W. Virginia Reg’l Jail & Corr. Facility Auth.*, 74
F.3d 46, 49 (4th Cir. 1996); *Lutostanski v. Brown*, 88 F.4th 582, 587 (5th Cir. 2023); *Coyne v. Am. Tobacco Co.*, 183
F.3d 488, 497 (6th Cir. 1999); *Collier v. SP Plus Corp.*, 889 F.3d 894, 897 (7th Cir. 2018); *Wallace v. ConAgra*
Foods, Inc., 747 F.3d 1025, 1033 (8th Cir. 2014); *Fent v. Oklahoma Water Res. Bd.*, 235 F.3d 553, 559 (10th Cir.
2000); *Ladies Mem’l Ass’n v. City of Pensacola*, 34 F.4th 988, 993-94 (11th Cir. 2022).

1 *Matter of Estate of Reugh*, 10 Wn. App. 2d 20, 55, 447 P.3d 544 (2019) (distinguishing *Spokeo*,
2 *Inc.*, 578 U.S. at 337-38 and stating, “Washington courts do not face such constitutional
3 limitations.”).

4 The U.S. Supreme Court has recognized the irreconcilable conflict between the judge-
5 made futility exception and the plain, mandatory language of the removal statute, which “give[s]
6 the court] no discretion to dismiss rather than remand an action.” *Int’l Primate Prot. League v.*
7 *Admins. of Tulane Educ. Fund*, 500 U.S. 72, 88-89 (1991) (internal quotation marks and citation
8 omitted). The Ninth Circuit has repeatedly recognized the futility exception’s doctrinal peril
9 following *International Primate*, but has not yet had occasion to expressly overrule *Bell*. *See, e.g.*,
10 *Bruns*, 122 F.3d at 1257-58 (concluding district court erred in dismissing rather than remanding
11 case for want of subject matter jurisdiction and citing with approval Fourth and Seventh Circuit
12 cases rejecting the futility exception); *Polo*, 833 F.3d at 1197-98 (casting doubt on the futility
13 exception but declining to overrule *Bell sua sponte* where no party had argued the issue); *Sauk-*
14 *Suiattle Indian Tribe v. City of Seattle*, 56 F.4th 1179, 1190 (9th Cir. 2022) (same). Although
15 courts within the Ninth Circuit have sporadically applied the futility exception, some have
16 substantially narrowed its application and cast doubt on its validity. *See, e.g.*, *Polo*, 833 F.3d at
17 1198 (“[O]nly when the eventual outcome of a case after remand is so clear as to be foreordained
18 have we held that a district court may dismiss it.”); *Sauk-Suiattle Indian Tribe*, 56 F.4th at 1190
19 n.16 (recognizing that Ninth Circuit “case law on the futility exception is conflicting,” and
20 collecting cases). In light of the Ninth Circuit’s strong signals that *Bell*’s futility exception is
21 likely no longer good law, this Court need not consider it here. *Bruns*, 122 F.3d at 1257-58.

22 Even if the futility exception remains good law, it does not apply here. It is not so clear as
23 to be foreordained that a Washington court would also dismiss Plaintiff’s claims for failure to
24 articulate a concrete injury-in-fact as required by Article III. *See id.* at 1198. To the contrary,
25 Washington state court jurisdiction is not limited to Article III cases and controversies. Whereas
26 Article III restricts federal district courts’ jurisdiction, Washington’s Constitution vests superior
courts with expansive “original jurisdiction in all cases and of all proceedings in which

1 jurisdiction shall not have been by law vested exclusively in some other court.” Wash. Const.
2 article IV, § 6. Because Washington superior courts’ jurisdiction is broad, “in Washington, a
3 plaintiff’s lack of standing is not a matter of subject matter jurisdiction.” *Matter of Estate of*
4 *Reugh*, 10 Wn. App. 2d at 56.

5 Recognizing this crucial difference between state and federal law, this Court expressly
6 rejected a futility argument in similar circumstances. *See Terrell*, 2017 WL 2169805, at *2. There,
7 the removing defendant argued that the plaintiff lacked Article III standing for failure to articulate
8 a concrete injury-in-fact and remand was futile. *Id.* But the Court concluded that, “[t]he
9 Washington appellate courts have not yet determined whether *Spokeo*’s clarifications to the
10 injury-in-fact prong extend to Washington law on standing, and it is therefore unclear whether
11 remand would be futile.” *Id.* (internal citation omitted). The *Terrell* Court remanded the case. *Id.*
12 Since that decision, the only Washington appellate court to discuss *Spokeo*’s injury-in-fact
13 standard in a case where the plaintiff asserted state law claims is the *Estate of Reugh* Court, which
14 rejected it. *See* 10 Wn. App. 2d at 55.

15 “Questions of standing under Washington law begin with the statutes themselves.” *West*
16 *v. Seattle Port Comm’n*, 194 Wn. App. 821, 826, 380 P.3d 82 (2016) (looking to statutory
17 language to determine whether a party had standing). Here, Plaintiff alleges that Defendant
18 violated a right guaranteed by a Washington State statute. If Defendant challenges Plaintiff’s
19 standing upon remand, the state court will look to the language of that statute, rather than to
20 interpretations of Article III. *See Matter of Estate of Reugh*, 10 Wn. App. 2d at 55. RCW
21 49.58.110 is a relatively new statute, and Washington courts have not yet determined its
22 requirements for standing. Therefore, it is not “absolutely clear” that a Washington court would
23 impose on Plaintiff the same concrete injury-in-fact standard required in federal court, and remand
24 is thus not futile. *See Terrell*, 2017 WL 2169805, at *2. Accordingly, this Court must remand this
25 case for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(c).

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IV. CONCLUSION

For the foregoing reasons, it was manifest error for the Court to dismiss this case instead of remanding it to state court once it determined that it lacked subject matter jurisdiction. On this basis, Plaintiff respectfully moves the Court to withdraw the portion of its Order dismissing the case and instead issue a remand order as required by law. Plaintiff also respectfully asks the Court to stay the deadline to amend his complaint set forth in its prior Order while the Court considers this motion for reconsideration.

V. CERTIFICATION OF CONFERRAL

Counsel for the parties met and conferred regarding the filing of this motion on May 1, 2024 at 2:30 pm via video conference.

RESPECTFULLY SUBMITTED this 7th day of May 2024.

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I certify that this memorandum does not exceed ten (10) pages, in compliance with this Court's Standing Order.

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